IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.158 of 2006

Reserved on:16.11.2006.

Decided on:November 27, 2006

Oriental Insurance Company Ltd. …..Appellant.

VERSUS

Soda Devi & Ors. …..Respondents.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] No.

For the Appellant: **Mr.Ashwani K.Sharma, Advocate.**

For the Respondents: **Mr.Gulzar Rathore, Advocate for respondents No.1 & 2.**

Mr.Ashwani Pathak, Advocate for respondent No.3.

Deepak Gupta, Judge.

This appeal under Section 30 of the Workmen's Compensation Act is directed against the order dated 27.3.2006 of the Commissioner Workmen's Compensation Act, Theog whereby in case No.2/2005 he has awarded compensation of Rs.4,39,900/- and interest of Rs.2,55,142/- total Rs.6,95,042/- in favour of the claimants and has held the Insurance Company liable to pay the amount.

2. The appeal was admitted on the following substantial questions of law:-

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?Yes.***

1) When the employer-employee relationship is not proved on record, owner-insured having been proceeded against ex-parte, in the absence of proof of employment of deceased on the inured vehicle, whether the insurer could be saddled with liability of payment of compensation amount to the claimants?

2) When the death of deceased workman has not been proved on record, arising out of or during the course of employment, whether the insurance company can be directed to bear the amount of compensation payable to claimants?

3) What is the manner and mode of prorf of salary / wages of deceased employee when the employer has not entered his appearance in the enquiry proceedings of a claim before the Commissioner under WC Act?

4) Whether the insurer is not liable to deposit the amount on account of interest on the compensation amount in terms of policy of insurance and whether the impugned order awarding interest on compensation amount to the claimants is against the provisions of the Workmen's Compensation Act?

QUESTION Nos.1 to 3:

3. To decide the above question, it would be appropriate to give the background of the case. The brief facts of the case are that deceased Parkash Chand is alleged to be employed as a Cleaner /

Conductor by Shri Ominder Singh Oberoi on his vehicle No.HR-01G-A-1289. It is alleged that he was earning Rs.5000/- per month. Admitted facts are that the deceased was travelling in the said vehicle from Keylong to Ambala. One F.I.R. Ext.PW-2/A dated 26.7.2005 was lodged by Paramjeet driver of the Tanker with Police Station, Keylong. In this F.I.R. it was stated that Parkash Chand deceased as well as the driver had started their journey from Ambala and reached Leh on 16.5.2001. They stayed at Leh for one night. Parkash Chand suffered from fever due to the excessive cold and when they were returning to Ambala the condition of Parkash Chand deteriorated. The deceased suffered breathing problem due to high altitude near Sarchu Pass and expired. Post mortem on his body was conducted and as per the opinion of the Doctor the death occurred probably due to the fact that the deceased was not acclimatized to the high altitude.

4. The main contention of Shri Ashwani Kumar Sharma is that it is neither proved that the deceased was employed on the Tanker nor his salary has been proved. It has also been contended that the death of the deceased was a natural death and cannot be termed to be accidental death. All these contentions are without any merit. The claimant had clearly stated that her son was employed with Ominder Singh Oberoi. The mere fact that Ominder Singh Oberoi did not appear in the witness box is not sufficient to hold that the deceased was not employed with him. The Insurance Company could have always summoned the insured or the driver of the vehicle to disprove the assertion of the claimant. The material on the file of the

Commissioner Workmen's Compensation clearly indicates that Parkash Chand died when he was going from Leh in vehicle No.HR-01G-A-1289 and the police sent wireless message in this behalf. A certificate in this behalf was also issued by the police officials at Keylong. F.I.R. which has been proved on record clearly indicates that the deceased was travelling in the Tanker No.HR-01G-A-1289 as Conductor. This was lodged immediately after the accident. The Insurance Company did not lead any evidence to the contrary. Therefore, in the facts of the case the Commissioner has rightly held that the deceased was employed with Ominder Singh Oberoi at the salary of Rs.4000/- per month. The deceased died due to cold and high altitude sickness. This was directly relatable to his employment since his employer had sent him on the Tanker to Leh. The entire road from Manali to Leh goes through very high altitude and judicial note can be taken of the fact that at these altitudes some persons suffer from high altitude sickness. This fact is also supported from the post mortem report.

Question No.4:

5. The Apex Court in ***New India Assurance Co. Ltd. vs. Harshadbhai Amrutbhai Modhiya & Another {(2006) 5 SCC 192}*** has held that the Insurance Company is not statutorily liable to pay the amount of interest and the question whether it is liable to pay interest or not has to be decided in terms of the policy of Insurance. In this case, the insurance policy is on record as Mark "X". It does not contain any condition that the Insurance Company is not liable to pay

interest. Therefore, the Insurance Company has failed to prove that it was not liable to pay the interest. It is accordingly held that the Insurance Company has rightly been held to pay the amount of interest.

6. As a result of the above discussion, the award calls for no interference and the appeal is accordingly rejected

(Deepak Gupta)
Judge.

November 27, 2006
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